

**Before the State of South Carolina
Department of Insurance**

In the matter of:

Phillip Tumminia

1930 Marsh Oak Lane
Seabrook Island, South Carolina 29455

File Number 2005-124953

**Default Order Revoking
All Licensing Privileges**

This matter comes before me pursuant to a Letter of Allegation and Notice of Opportunity for Public Hearing served, as required within S.C. Code Ann. § 38-3-170 (Supp. 2004), by the State of South Carolina Department of Insurance upon Phillip Tumminia by both certified mail, return receipt requested, and by regular mail on November 14, 2005.

That letter informed Phillip Tumminia of his right to request a public hearing upon the allegations of impropriety contained within the letter against him. The letter further warned that his failure to make a timely, written request would result in my summary revocation of his license to do business as a resident insurance producer within the State of South Carolina. **Despite that warning, Phillip Tumminia has failed to respond to the Department's letter.** On December 16, 2005, therefore, counsel for the Department filed an Affidavit of Default, and submitted the entire matter directly to me for my summary decision based solely on the record.

The letter alleged, and I now find as fact, that while licensed to do business as a resident insurance producer within the State of South Carolina he failed to forward \$245.20 in premiums collected from consumers to American General Life and Accident Insurance Company.

Section 38-43-130 (4) of the South Carolina Code provides the Director or his designee "may revoke or suspend a producer's license after ten day's notice...when it appears that a producer....improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business".

In accordance with my findings of fact, and considering Phillip Tumminia's failure to avail himself of his opportunity to be heard, I now conclude, as a matter of law, that Phillip Tumminia violated S.C. Code Ann. § 38-43-130 (A) that his resident insurance producer's license should be revoked.

This administrative disciplinary order is a public record subject to the disclosure requirements of the State of South Carolina's, *Freedom of Information Act*, S.C. Code Ann. §§ 30-4-10, *et seq.* (1991 and Supp. 2000). Nothing contained within this administrative disciplinary order should be construed to limit or to deprive any person of any private right of action under the law. Nothing contained within this administrative disciplinary order should be construed to limit, in any manner, the criminal jurisdiction of any law enforcement or judicial officer. Nothing

contained within this administrative disciplinary order should be construed to limit the statutory duty of the Director of Insurance, exercised either directly or through the Department of Insurance, to "report to the Attorney General or other appropriate law enforcement officials criminal violations of the law relative to the business of insurance or the provisions of this title which he considers necessary to report." S.C. Code Ann. § 38-3-110(3) (Supp. 2004).

It is, therefore, ordered that the license of Phillip Tumminia to do business as a resident insurance producer within the State of South Carolina be, and is hereby, revoked, and that no license issued through the State of South Carolina Department of Insurance is to be issued to him.

It is further ordered that a copy of this order shall be transmitted to the National Association of Insurance Commissioners for distribution to its current member states and to each insurer for which Phillip Tumminia is currently licensed, through the State of South Carolina Department of Insurance, as a resident insurance producer within the State of South Carolina.

This order becomes effective as of the date of my signature below.

A handwritten signature in black ink, reading "Eleanor Kitzman". The signature is fluid and cursive, with the first name "Eleanor" and last name "Kitzman" clearly distinguishable.

Eleanor Kitzman
Director

December 12, 2005 at
Columbia, South Carolina

**Before the State of South Carolina
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SCDOI File Number 2005-124953

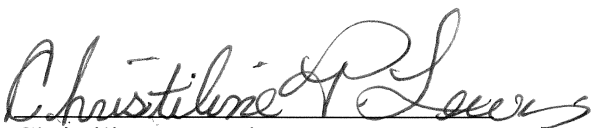
Affidavit of Default

Personally appeared before me John B. O'Neal, III, who, being duly sworn, stated that at all times relevant to this Affidavit of Default he was the attorney representing the State of South Carolina Department of Insurance (the Department) in this administrative action. He further stated the following:

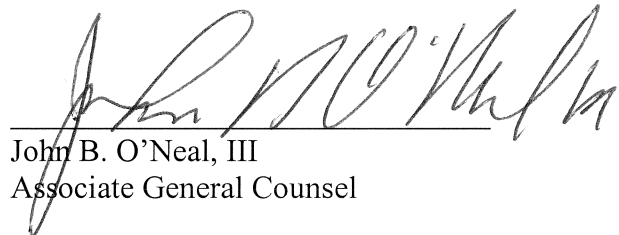
The Department served notice on Phillip Tumminia at the address detailed above by a Letter of Allegation and Notice of Opportunity for a Public Hearing that the Department would request the Director of Insurance to summarily revoke his license to act as a resident insurance producer within the State of South Carolina in thirty days. The Department served that notice, pursuant to S.C. Code Ann. § 38-3-170 (Supp. 2004), by "depositing it in the United States mail, postage prepaid, addressed to the last known address of the person and registered with the return receipt requested." That letter further notified Phillip Tumminia of his opportunity, within thirty days, to request in writing a public hearing.

The Department mailed the notice concerning the right to a hearing by certified mail, return receipt requested, and by regular mail, on or about October 27, 2005. On November 28, 2005 the United States Postal Service returned the certified letter and regular letter marked "unable to deliver". Phillip Tumminia has made no request for a public hearing or any other response to the notice. The time in which to do so has expired. He is now in default.

Sworn to and subscribed before me
this 28th day of December, 2005



Christiline P. Lewis
Notary Public for the State of South Carolina
My Commission Expires: November 20, 2006



John B. O'Neal, III
Associate General Counsel

South Carolina Department of Insurance
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